

CHALOS & CO, P.C.
Attorneys for Plaintiff
Katherine N. Christodoulatos
55 Hamilton Avenue
Oyster Bay, NY 11771
Tel: (516) 714-4300

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

PACIFIC PILE & MARINE, LP, a Delaware
limited partnership,

Plaintiff,

v.

NORTHWEST UNDERWATER
CONSTRUCTION, LLC. a Washington limited
liability company,

Defendant.

IN ADMIRALTY

NO.

VERIFIED COMPLAINT

Plaintiff PACIFIC PILE & MARINE, LP (“PPM”) states pursuant to L.Civ.R. 10.1 that the principal place of business of PPM is 700 South Riverside Drive, Seattle, WA, 98108 and the principal place of business of Defendant NORTHWEST UNDERWATER CONSTRUCTION, LLC (“NUC”) is 800 NE Tenney Rd., Suite 110-111, Vancouver, WA, 98685, and for its Verified Complaint against NUC alleges and pleads as follows:

I. JURISDICTION AND VENUE

1. This action arises from the breach of a maritime contract, and comprises an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This action falls under this Court’s admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333, and is brought pursuant to Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

2. The jurisdiction of this Court is founded on the presence within the District of property of the Defendant that may be attached by process of maritime attachment and garnishment under the provisions of Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, as pled in Section IV below.

II. PARTIES

3. Plaintiff PPM is a Delaware limited partnership, licensed, registered, and authorized to do business as a marine contractor in the state of Washington.

4. Defendant Northwest Underwater Construction, LLC (“NUC”) is a Washington limited liability company doing business in Clark County, Washington.

III. FACTS AND UNDERLYING CLAIMS

5. NUC entered into a contract with Ocean Power Technologies, Inc. and/or its wholly-owned subsidiary, Reedsport OPT Wave Park, LLC (hereinafter collectively referred to as “OPT”) to perform underwater construction for the Reedsport OPT Wave Park Project, Project No. 12713 (the “Project”). The Project, a commercial wave energy generator off the coast of Oregon, is designed to deliver renewable power to the Pacific Northwest electric grid. OPT is the owner of the Project.

6. Incident to its contract with OPT, NUC entered into an agreement (the “Agreement”) with PPM wherein PPM was to supply vessels and to provide towing and barging services on the navigable waters of the United States in connection with the Project in exchange for payment from NUC.

7. The Agreement is a maritime contract.

8. As the result of mutually agreed modifications necessary due to Project requirements, PPM provided services and equipment valued at \$1,232,627.02. See Exhibit 1.

9. PPM performed all conditions, covenants, obligations, and promises required to be performed as part of the Agreement.

10. NUC made an initial payment of \$323,153.83 to PPM.

11. Contrary to, and in breach of, its express and implied obligations, warranties, and responsibilities, NUC failed, and despite demand, refused to pay the remaining balance owed, approximately \$909,473.19.

12. NUC's failure to pay PPM constitutes a material breach of the Agreement.

13. On February 13, 2013, PPM initiated litigation against NUC in the United States District Court for the Western District of Washington, Tacoma Division, claiming as damages the principal sum of \$909,473.19, plus other damages and amounts as will be proven at trial, such as pre-judgment interest, costs, and any recoverable legal fees. That action has been assigned case number 3:13-cv-05106. PPM commenced the instant proceeding in order to obtain security from NUC for PPM's claim, and this security will be used to satisfy PPM's eventual award of damages in the pending Western District of Washington action.

IV. APPLICATION FOR ATTACHMENT PURSUANT TO SUPPLEMENTAL ADMIRALTY RULE B

14. NUC is not present and cannot be found in the District within the meaning of Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. See Attorney Affidavit That Defendant Cannot be Found Within the District attached as Exhibit 2. NUC, however, has within the District intangible personal property in the hands of parties who may be named garnishees in the process of maritime attachment and garnishment, comprised of debts, credits, or obligations payable by entities located within or subject to personal jurisdiction within this District.

15. More particularly, OPT is, upon information and belief, likely to be holding contractually agreed payments, debts, and/or other obligations payable, held in favor, to the order of, or for the benefit of NUC. These payments, debts, and/or other obligations payable are evidenced by correspondence from Wayne J. Liberman, Purchasing Manager of Ocean Power Technologies, Inc., to Mr. Michael Eakin of NUC, dated October 14, 2012, which states, in relevant part:

Ocean Power Technologies Inc (OPT) and Northwest Underwater Construction LLC. (NWUC) have mutually exchanged letters regarding issues related to the deployment process of the first of three Floating Gravity Based Anchors(FGBA's) off the coast of Reedsport/Gardiner OR in support of the PB150B2 PowerBuoy deployment which you are under contract for in our PO 101666.

* * *

Ocean Power Technologies will be withholding the sum of Seven Hundred and Fifty Thousand Dollars from payments to Northwest Underwater Construction LLC until such time that the FGBA damage is remediated by NWUC either by repair of the FGBA in a manner acceptable to OPT or by a mutually agreed to cash settlement to reserve the funds for a future repair. OPT reserves the right to adjust this withholding as additional information becomes available.

A true and correct copy of this correspondence is attached hereto as Exhibit 3.

16. Garnishee Ocean Power Technologies, Inc., is located within the District of New Jersey, and has its principal place of business at 1590 Reed Road, Pennington, NJ, 08534. See Exhibit 4.

17. Garnishee Reedsport OPT Wave Park LLC is located within the District of New Jersey, and has its principal place of business at 1590 Reed Road, Pennington, NJ, 08534. See Exhibit 5.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays as follows:

A. That process in due form of law, according to the practice of this Honorable Court in matters of admiralty and maritime jurisdiction issue against Defendant and said Defendant be cited to appear and answer the allegations of this Complaint;

B. That since the Defendant cannot be found within this District pursuant to Rule B, that the Court issue an Order directing the Clerk of Court to issue Process of Maritime

Attachment and Garnishment pursuant to Rule B, attaching all of Defendant's respective property within this District, comprised of debts, credits, or obligations in the hands of persons named garnishees in the Process of Maritime Attachment and garnishment, including any tangible or intangible assets held by garnishees Ocean Power Technologies, Inc., and Reedsport OPT Wave Park LLC;

C. That judgment be entered against the Defendant in the sum of \$909,473.19 and the proceeds of the assets attached be applied in satisfaction thereof;

D. That the Court grant such other and further relief as it deems, just, equitable and proper.

Dated: Oyster Bay, New York
February 27, 2013

CHALOS & CO, P.C.
Attorneys for Plaintiff
Pacific Pile & Marine LP

By: s/ Katherine N. Christodoulatos
Katherine N. Christodoulatos (KC-1226)
55 Hamilton Avenue
Oyster Bay, New York 11771
Tel: (516) 714-4300
Fax: (516) 750-9051
Email: kchristodoulatos@chaloslaw.com

Of Counsel:

NICOLL BLACK & FEIG PLLC
Jeremy B. Jones, WSBA #44138 (*pro hac vice application forthcoming*)
1325 Fourth Avenue, Suite 1650
Seattle, WA 98101
Tel: (206) 838-7555
Fax: (206) 838-7515
Email: jjones@nicollblack.com

VERIFICATION

I, WILBUR L. CLARK, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury:

1. I am employed by Plaintiff Pacific Pile & Marine in the capacity of President of the General Partner.
2. I have read the foregoing Verified Complaint and know the contents thereof; and
3. The information contained in the Verified Complaint is true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Signed in SEATTLE, Washington, February 27, 2013



Wilbur L. Clark